

**MASSACHUSETTS DEPARTMENT
OF
TELECOMMUNICATIONS AND ENERGY**

Rulemaking, pursuant to G.L. c. 164, and c. 25,)

to establish rules governing the unbundling of services) D.T.E. 98-32-E

related to the provision of natural gas)

INITIAL COMMENTS OF RELIANT ENERGY RETAIL, INC.

Pursuant to the Massachusetts Department of Telecommunications and Energy's (DTE) December 17 Order and associated Notice in the above-captioned proceeding, Reliant Energy Retail, Inc. (Reliant Energy) hereby submits the following initial comments on the "Petition for Adoption of Regulations" (Petition) collectively filed on November 3, 1999 by the ten Massachusetts gas local distribution companies (LDCs). The Petition requests that the DTE adopt regulations governing the provision of gas retail service in Massachusetts.

INITIAL COMMENTS

Reliant Energy is an active participant in the Massachusetts retail gas market. Not only does Reliant Energy serve various commercial and industrial retail customers throughout the state, as a major supplier under Bay State's current residential "Pilot Program," Reliant Energy has significant practical experience in providing retail gas service to residential gas consumers. Moreover, Reliant Energy recently completed the conversion of its computer billing and accounting system following Bay State's implementation of the two billing options permitted under the Model Terms and Conditions.

From this perspective, Reliant Energy offers the following comments.

GENERAL COMMENTS

While Reliant Energy understands the need to implement now some regulations governing the provision of retail gas service in Massachusetts, Reliant Energy is nevertheless concerned that some of the proposed regulatory provisions are inconsistent with the business practices and tariffs of other jurisdictions now permitting, or contemplating permitting, unbundled retail gas service. Reliant Energy, a retail energy supplier that serves customers nationwide, is a strong proponent of standardized, easily-

understood business rules, practices, and tariff terms and conditions for all jurisdictions. Such standardized service provisions ensure a higher quality of service -- with lower transactions costs -- all to the ultimate benefit of the retail gas consumer.

In this regard, Reliant Energy commends to the DTE's attention the ongoing efforts of the Coalition for Uniform Business Rules (CUBR), an industry group formed to develop and promote standardized business rules, practices, and associated electronic implementation guidelines for both gas and electric retail business across the nation.⁽¹⁾ CUBR formed early in the Fall of 1999, and, after intensive efforts, released a comprehensive document containing consensus business rules for gas and electric retail business.⁽²⁾

CUBR's current efforts are two-fold: CUBR is in the process of (i) drafting guidelines, which will define, in specific detail, the electronic transactions necessary to implement CUBR's business guidelines⁽³⁾ and (ii) meeting with various of the nation's state regulators and other industry groups (EEI and the National Energy Marketers Association, for example) in an effort to solicit input and achieve a wider consensus.

Unfortunately, the CUBR process had not advanced far enough to provide detailed guidance to the Massachusetts Gas Unbundling Collaborative in the drafting of the November 3, 1999 proposed unbundling regulations. Nevertheless, Reliant Energy expects that CUBR will substantially complete its efforts in the near term, and that the Massachusetts retail energy markets stand to benefit greatly from adopting this work.⁽⁴⁾

The Department should therefore not consider its gas unbundling regulations to be written in stone; rather, the Department should allow for the consideration and future adoption of consensus revisions to these regulations to comport with any widely-adopted national guidelines that may emerge from CUBR's efforts.

SPECIFIC COMMENTS

For the reasons discussed below, the Department should approve the following clarifications and modifications to the draft regulations, all of which are necessary to make the proposed regulations meaningful in the near term for existing markets.

For ease of review by the Department, Reliant Energy's specific comments track the order of the regulations.

Supplier and Retail Agent Requirements: Certification Requirements

Information Filing Requirements **.04(2)(b) requires prospective suppliers and retail agents to apply for certification by the Department prior to serving retail customers. "Applicants are required to file an original application, with two copies and a copy on diskette."

Reliant Energy objects to the requirement that applicants submit their application on diskette. Diskettes are becoming obsolete, particularly as a means of transferring electronic files. The Department should not inflexibly bind suppliers to an outmoded and relatively-inefficient technology; rather, applicants should be able to take advantage of more efficient modalities, such as direct transmission *via* internet.

Accordingly, Reliant Energy requests that the Department revise this regulation as follows:

Applicants are required to file an original ~~and application, along with~~ two copies ~~of its application~~ and ~~to submit~~ a copy ~~in electronic format on diskette~~. Within 30 days of any material or organic (G.L. c. 156B) change in the information required, the Applicant shall

file updated information with the Department. The Applicant also shall file an updated application annually. If there has been no material or organic change to the relevant information, an Applicant may submit an updated application indicating that there has been no change since the previous application. Any Applicant who knowingly submits misleading, incomplete, or inaccurate information may be penalized in accordance with statute and with the regulations promulgated by the Department.

Supplier and Retail Agent Requirements: Billing and Termination of Supplier Service Requirements

Proposed regulation **.04(3), "Billing and Termination of Supplier Service Requirements," sets forth a set of guidelines for the rendering of Supplier bills as well as the procedures for terminating Supplier service. There are at least three aspects of this proposed regulation that must be clarified or revised by the Department.

Customer "Receipt" of Bills First, Reliant Energy notes that several events in the billing timeline key off of the customer's "receipt" of its bill. "Receipt," however, is not a defined point in time under the proposed regulations and, as a result, compromises the timeline itself. If the proposed billing and termination procedures are to have any meaning, Suppliers (and their Customers) must have a concrete timeline upon which they can rely in rendering and processing bills.

Reliant Energy suggests that the Department remedy this defect by cross-referencing 220 C.M.R. 25.01(1), the section of the general regulations specifying that customer receipt of a bill or notice may be presumed 3 days after mailing or, if delivered, 3 days after delivery. The clarified provision would thus read:

(c) A Bill for Supplier Service provided to a Residential Customer shall not be considered "due" under these regulations in less than 45 days from receipt (as defined in 220 C.M.R. 25.01). In those instances when a Supplier issues a Bill less frequently than the billing period defined in a Local Distribution Company's terms and conditions for Distribution Service, pursuant to 220 C.M.R. **.04(3)(b), the Bill shall not be considered "due" in less time than has elapsed between receipt of the current Bill and receipt of the previous Bill from the Supplier. No disputed portion of the Bill shall be considered "due" if the Retail Customer has filed a complaint that is pending with the Department, in accordance with 220 C.M.R. 25.00 and 220 C.M.R. **.06.

"Due" Date for Bills The second problem with this proposed regulatory section is the ambiguity in the word "due" under **.04(3)(c). While this section clearly defines "due" in terms of triggering a Supplier's right to terminate, at 45 days, supplier service, the term is unclear, however, with respect to a Supplier's right to specify a timely payment date *at some time in advance of the 45-day termination "due" date*.

Reliant Energy requests that the Department clarify that **.04(3)(c) does not preclude Suppliers from specifying a timely payment date at some reasonable interval after the bill is rendered, but before the 45-day, termination "due" date. Retail Customers should not

have an extended, 45-day grace period, ending with abrupt termination; rather, they should be subject to the more accepted and customary commercial procedure of having to pay their bills by some reasonable date after the bill is rendered, after which time the Customer is notified of its delinquency and terminated if the Customer does not cure.⁽⁵⁾ This clarification is also consistent with the dunning procedure specified by the regulations, which requires Suppliers to send a second request for payment at 27 days after the bill was rendered -- indeed, if bills were not "due" until the 45th day, Suppliers would have no right to demand payment before that date and, thus, no basis for sending this 27-day demand letter.

Billing and Termination Time Line Third, and most important, the billing and termination timeline set forth in **.04(3)(b)-(c) is unreasonable in that it forces Suppliers to continue serving Retail Customers who have breached their supply contract for up to ***three*** additional billing cycles after the service month being billed. As explained below, this result is the unfortunate, and, Reliant Energy would contend, unintended, consequence of the 10-day advance notification requirement for supplier service termination specified in the Model Terms in Conditions.⁽⁶⁾

Under the proposed regulations, the ***earliest*** a Supplier can send a termination notice to a Customer that has not paid its bill would be on the 48th day following the date the bill was rendered,⁽⁷⁾ and the Customer could be terminated three days later, on the 51st day. Under the Model Terms and Conditions, however, the Customer's termination can be effectuated only if the LDC is notified of the termination ten or more days in advance of the Customer's next scheduled meter read. Consequently, the termination date prescribed by the proposed regulations can be too late for the LDC to honor the Supplier's termination request for the upcoming billing cycle,⁽⁸⁾ and the Supplier can thus be forced to provide an additional month's worth of service to a Customer who has repudiated its contract and has been notified that its service with the Supplier has been terminated.

This result is patently unreasonable from the Supplier's perspective and, indeed, could cause significant customer confusion, particularly if the customer who has received its final notice takes action to secure a new supplier or default service.

Accordingly, Reliant Energy respectfully requests that the Department either (i) revise the timeline set forth in the regulations to permit Suppliers to terminate customers for non-payment five days earlier than proposed in the draft regulations or (ii) shorten the advance-notification requirement set forth in Section 24.5.4 of the Model Terms and Conditions to seven days. Reliant Energy suggests that the later solution would be preferable in that it would preserve the most amount of time for Suppliers and their Customers to resolve delinquent accounts prior to

Release of Customer Usage Information Proposed Section **.04(4)(a) requires the Supplier or Retail Agent to secure verification of a Retail Customer's decision to release its customer usage information "in accordance with 220 C.M.R. **.04(4)(c)." Proposed Section **.04(4)(c), however, applies explicitly to the initiation of service and does not

contain any procedures for obtaining release of, let alone the verification of the release of, Customers' historic usage information.

The Department should condition its approval of this provision upon a requirement that interested stakeholders develop and submit agreed-upon procedures for acquiring Customer authorization to release usage information to Suppliers. The release of this information is a critical first step in the customer-acquisition process; it occurs before the "Letter of Authorization" stage. The procedure selected should minimize the paperwork and "hassle-factor" to customers, as well as any administrative and transactions costs to Suppliers and LDCs.⁽⁹⁾

In this vein, Reliant Energy has attached as an Appendix, the pre-enrollment process and associated standardized forms being developed by the Coalition for Uniform Business Rules. This process involves a "negative checkoff" system, which serves to minimize the burdens to prospective Retail Customers.

Letter of Authorization **.04(4)(c)1 describes a process by which a Retail Customer confirms its selection of a Supplier. The language of the provision seems to contemplate that such Letters of Authorization may be in paper form only, which is not always the lowest-cost method of performing this function, nor is it likely to be the industry standard in the near future.

Reliant Energy suggest that this paper-only construct is unduly restrictive and will hamper efforts to enroll customers at the lowest cost possible.⁽¹⁰⁾ Accordingly, the provision should be modified as follows in order to allow for electronic sign-up as an option.⁽¹¹⁾

1. Letter of Authorization. For the purposes of this section, the term "Letter of Authorization" means an easily separable document whose sole purpose is to authorize a Supplier to initiate Supplier Service for a Retail Customer. The **Letter of Authorization may be a written or electronic document. If the Letter of Authorization is a written document, it must be signed and dated by the Retail Customer. If the Letter of Authorization is an electronic document, it must be validated by the use of the Retail Customer's Utility Account Number or other unique identifier, e.g., mother's maiden name, last four digits of the Retail Customer's social security number, or birth month and day, or by electronic signature.** The Letter of Authorization shall not be combined with inducements of any kind on the same document, except that a perforated "tear-off" section shall be construed as a separate document. At a minimum, the Letter of Authorization must be printed with a readable type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms:

Rescission Period **.04(4)(d) prescribes a 3-day rescission period for a customer to rescind its choice of supplier. The regulations fail, however, to provide the customer with any guidance as to how a customer is to rescind its choice.⁽¹²⁾ This regulatory gap exposes suppliers to an unnecessary levels of uncertainty with regard to their customer portfolio and to financial exposure with respect to their underlying supply and capacity assets.

To reduce this level of uncertainty, the Department should modify the provision to require that retail customers seeking to exercise this rescission right must do so by providing actual notice, by telephone or other means, that is received by the LDC within the prescribed 3-day period. The LDC would then send an associated EDI transaction to the affected supplier.

Reliant Energy suggests that the provision be revised as follows:

Rescission Period. A Supplier may not initiate Supplier Service to a Residential Retail Customer, or to a Non-Residential Retail Customer with an annual load of less than or equal to 5000 therms, choosing the Supplier prior to midnight on the third day following the Retail Customer's receipt of a written confirmation of an agreement to purchase ~~electricity~~ gas and a statement entitled "Terms of Service," as described in 220 C.M.R. **05(2), during which period the Retail Customer shall have the right to rescind, without charge or penalty, the affirmative choice of Supplier, by providing actual notice to the Local Distribution Company, by phone, fax or other electronic means, within this three-day rescission period. ⁽¹³⁾

Late Payment Fees

As proposed, the draft regulations would prohibit Suppliers from "requiring security deposits or assessing late payment charges from Retail Customers except as specifically provided for in 220 C.M.R. 26.00." When read in conjunction with 220 C.M.R. 26.00, this language means that Suppliers cannot charge a security deposit or late fees to *residential* Retail Customers.

Reliant Energy objects to the proposal that suppliers be prohibited from charging late fees to Residential Customers. ⁽¹⁴⁾ Late payment charges are, in fact, eminently reasonable, and prohibiting such charges constitutes bad public policy. *All* Customers, including Residential Customers, have an obligation to pay their bills on a timely basis, and, absent the prospect of late fees, Residential Customers will have little incentive to pay their bills on time, particularly since Suppliers cannot physically terminate gas service to Residential Customers. Suppliers should have some mechanism, short of terminating a Customer's contract and seeking unpaid gas charges in court, for dealing with delinquent residential accounts.

In this regard, Reliant Energy notes that **05(2)(c), a new provision which requires Suppliers to disclose to Retail Customers the "due date of Bills and consequences of late payment," would essentially be meaningless if Suppliers are not able to impose late fees. After all, should a Supplier disclose to its Residential Customers that they can ignore the due dates on their bills without any financial consequence?

Late fees for unpaid obligations are the rule, rather than the exception, in the retail world. Reliant Energy currently is permitted to charge late fees for delinquent residential accounts under the Bay State Pilot Program, and this system has not jeopardized retail service to such residential customers. The Department should continue this policy;

Residential Customers should not be given a regulatory right to cast Suppliers into the lot of unpaid creditor.

For these reasons, the Department should revise the draft regulations to permit Suppliers to continue charging delinquent Residential Customers a reasonable late fee.⁽¹⁵⁾ To this end, Reliant Energy respectfully requests that the Department modify the proposed regulations as follows:

(5) Security Deposits and Late Payment Charges. A Supplier shall be precluded from requiring security deposits ~~or assessing late payment charges~~ from Retail Customers except as specifically provided for in 220 C.M.R. 26.00.

Information Disclosure Requirements: Terms of Service

This proposed regulatory provision (**.05(2)) is substantially problematic and must be revised and clarified as follows:⁽¹⁶⁾

Scope of Disclosure Requirements The Department should clarify that the items enumerated in the Supplier Terms of Service form are the minimum required, and that Suppliers are not precluded from adding additional items, so long as all enumerated items are included in the Terms of Service. For example, **.05(2)(i), the regulation requiring Suppliers to list a "toll-free number for customer service and complaints;" should not be interpreted as precluding a Supplier from also including an internet website address as an additional contact for such customer matters.

Accordingly, the Department should modify this regulation to read:

(2) Terms of Service Requirement. Each Supplier shall prepare a statement entitled "Terms of Service" as described in this section. The Terms of Service shall be distributed in accordance with 220 C.M.R. **.05(4), and shall conform to all applicable rules and regulations of the Attorney General. At a minimum, ~~t~~The Terms of Service shall present the following information:

"Pricing Structure" Among other things, Suppliers are required to include in their Terms of Service their:

Actual pricing structure according to which the Retail Customer will be billed, including an explanation of price variability and price level adjustments that can cause the price to vary;

The term "pricing structure" is nebulous and should be clarified. Suppliers may offer Retail Customers a variety of rates, ranging from a stated, fixed rate to a variable rate, or, for more sophisticated Customers, rates which are determined by reference to various formulas or financial tools. Moreover, Reliant Energy expects that Suppliers will be

creative and will offer new types of rate structures as time goes by and the Massachusetts retail markets evolves. In these circumstances, it would be impracticable for a Supplier to refile its Terms and Conditions every time it offers a new rate to a Customer.

For these reasons, Reliant Energy requests that the Department clarify that, for the purpose of complying with this "pricing structure" requirement, Suppliers can simply describe broad categories of rate options they intend to offer, with the understanding that the particular rate level charged to each individual Customer (or, if the rate level cannot be determined ahead of time, the formula used to determine the Customer's specific rate) would be clearly identified in each Customer's bill, as required under **.04(3)(a)3.

Default Service **.05(2)(k) requires that Suppliers include in their Terms and Conditions "provisions for default service." Again, it is unclear how this regulation applies to Suppliers, since it is the LDCs, not the Suppliers, who will be offering default service to Retail Customers.

As this service is a tariffed offering of the LDCs, and, as such, will likely change over time as a result of the actions of the LDC and the Department, it would be inefficient, costly, and potentially confusing to Customers to require Suppliers to translate and include in their Terms of Service these default service details. Rather, Suppliers should at most be required to specify that Customers may be eligible to take default service from the LDC, and that they should contact the LDC directly for details on the availability and terms of default service.

Information Disclosure Requirements: Distribution of Terms of Service

Among other things, **.05(3) provides that a potential Retail Customer's three-day rescission period begins when the Retail Customer receives the Terms of Service from the Supplier: "... the Retail Customer's receipt of said document shall trigger the three-day rescission period required in 220 C.M.R. **.04(4)(d)." This language is problematic, because nowhere in the proposed regulations is "receipt" by the Retail Customer defined. Suppliers are thus subject to open-ended rescission risks, introducing uncertainty and extra costs into the Suppliers' operations.

Reliant Energy recommends that the Department correct this problem simply by cross-referencing 220 C.M.R. 25.01(1), the section of the general regulations specifying that customer receipt of bills and notices may be presumed 3 days after mailing or, if delivered, 3 days after delivery. The clarified provision would read:

Said document shall accompany written confirmation by the Supplier of the Retail Customer's agreement to take Supplier Service; and the Retail Customer's receipt (**as defined in 220 C.M.R. 25.01**) of said document shall trigger the three-day rescission period required in 220 C.M.R. **.04(4)(d).

Complaint and Damage Claim Resolution: Refunds as a Remedy for Unauthorized Service

Reliant Energy has two comments with respect to the refund provisions under this section (**.06(3)(b)). First, **.06(3)(b)(1) requires the offending New Supplier or Retail Agent to refund to the Customer "the difference between what the Customer would have paid to the Local Distribution Company or previous Supplier and actual charges paid to the new Supplier." This provision fails to recognize that the New Supplier's charges might actually be lower, in which case no refund would be possible (and, certainly, no surcharge to the Customer would be contemplated). Reliant Energy thus suggests that the provision be clarified as follows:

To the Customer, the **positive** difference between what the Customer would have paid to the Local Distribution Company or previous Supplier and actual charges paid to the new Supplier;

Second, **.06(3)(b)(3) requires the unauthorized New Supplier to refund to either the LDC or the original Supplier "the gross revenue the Local Distribution Company or original Supplier would have received from the Customer during the time the Customer received Supplier-Service from the new Supplier.

Basing compensation upon gross, rather than net, revenues unjustly enriches the LDC/original suppliers because such a methodology ignores the fact that these parties would have had to incur significant costs to provide the gas, had they remained the Customer's Supplier. The compensation measure should instead be based on these parties' margins, (or, in case of an LDC, the LDC's sales price less variable supply costs). Accordingly, Reliant Energy suggests that the provision be revised as follows:

3. To the Local Distribution Company or original Supplier, the net **gross** revenue the Local Distribution Company or original Supplier would have received from the Customer during the time the Customer received Supplier-Service from the new Supplier.

CONCLUSION

The proposed gas unbundling regulations, while a good start, will likely need to be revisited as consensus national standards for providing retail gas service emerge. In the meantime, however, the proposed regulations must be revised and clarified in order to meet the needs of Massachusetts' existing retail gas markets, particularly the fledgling residential market.

Accordingly, Reliant Energy respectfully requests that the DTE condition its approval of the proposed regulations in a manner consistent with the modifications and requests for clarification outlined above.

Respectfully submitted,

Gordon J. Smith, Esq.

JOHN & HENGERER

1200 17th Street, NW

Suite 600

Washington, DC 20036

(202) 429-8814

gsmith@jhenergy.com

Counsel for Reliant Energy Retail, Inc.

Dated at Washington D.C.: February 1, 2000

APPENDIX

CUBR Customer Information Standards

1. Unlike some other industry groups, CUBR's membership consists of a true cross-section of all industry stakeholders, including gas and electric utilities, energy marketer, meter service providers, meter data management agents, billing and collection companies, software vendors, and other mid- and back-office service providers. CUBR's members all have "hands-on" experience with competitive environments in various retail energy markets across the nation.
2. Coalition for Uniform Business Rules, Standards for Uniform Business rules, Version 1.1.
3. CUBR's electronic transactions working group has attracted a larger cross-section of industry participants, including, in particular, additional utility participants, as well as electronic vendors and consultants, than did the original CUBR working sessions.
4. In many cases, CUBR's proposed business rules address the same matters addressed by the draft gas regulations. For example, **.03(8) of the proposed regulations governs the disclosure by LDCs of their customers' usage information. CUBR has already developed (i) a standardized information request form and (ii) a detailed process for authorizing the disclosure, as well as the subsequent transmission, of customer information to the supplier. These disclosure forms and standardized process have been crafted to bring efficiencies into the customer acquisition process by minimizing the transactions costs associated with finding and ultimately signing up customers, while at the same time ensuring that retail customers' privacy concerns are safeguarded.
5. Reliant Energy notes that this clarification comports with Reliant Energy's existing billing practice for its residential retail customers under Bay State's Pilot Program: Reliant Energy states in its bills a reasonable time frame within which payments are due (20 days), after which late fees are imposed and subsequent collection efforts (reminder notices and phone calls) commence.
6. Enrollment, Cancellation, and Termination of Supplier Service, Section 24.5.4, states that:

If the Supplier submits information to the Company to terminate Supplier Service to a customer less than ten (10) days before the next scheduled meter read, Supplier Service shall be terminated on the date of the Customer's subsequent scheduled meter read. The Company shall electronically confirm the termination date for Supplier Service.

7. This interval assumes (i) the customer's "receipt" of the bill is deemed to be on Day 4, 3 days after it is rendered, and (ii) (more dubiously) that the Supplier is able to render its bill on Day 1, the read date of the meter. More realistically, though, Supplier bills usually cannot be calculated and rendered at least until the day after the read date, thus extending the termination time line by an additional day.

8. Assume, for example, that an LDC's Customers are on 30-day read cycles. The LDC reads the meters on Day 1. On Day 2, the Supplier renders its bill to the Customer, and the Customer "receives" the bill on Day 5. Under the proposed regulations, *the earliest* the supplier could terminate the Customer for nonpayment would be on Day 52, if the Supplier sent a final notice on Day 49. But when the LDC is then notified on Day 52 that the Customer has been terminated, it is already less than 10 days from the date of the next meter read (Day 60), and, thus, the LDC will not effectuate the termination until the following meter read (Day 90).

9. For this reason, requiring Customers to do a separate, additional "Letter of Authorization" for the sole purpose of authorizing the release of usage information is unreasonable and should not be countenanced.

10. Several other jurisdictions already permit retail customers to enroll *via* the internet.

11. The new language is consistent with the customer authorization language developed by CUBR.

12. Reliant Energy understands that the "Customer Transactions" portion of the EBT report will be modified to require the LDCs to notify affected Suppliers of Customer rescissions by transmitting a specific type of EDI transaction.

13. Reliant Energy has also corrected the inadvertent reference to purchasing "electricity."

14. Reliant Energy also questions whether prohibiting Suppliers from charging security deposits is really wise from a policy perspective. This prohibition could actually work against Residential Customers, as it may preclude Suppliers from offering creative supply and billing plans, tailored to the Residential Customer's individual circumstances.

15. Of course, the late fee chargeable to Residential Customers could not exceed the interest rate prescribed by 220 C.M.R. 26.10.

16. The provision contains an incorrect cross-reference and should be revised as follows:

(2) Terms of Service Requirement. Each Supplier shall prepare a statement entitled "Terms of Service" as described in this section. The Terms of Service shall be distributed in accordance with 220 C.M.R.

** 05(4)(3), and shall conform to all applicable rules and regulations of the Attorney General. The Terms of Service shall present the following information: